

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 7, 2021 at 2:00 p.m.

1. [21-23833-E-13](#) ELENA GONZALEZ

[PGM-1](#)

**MOTION TO EXTEND AUTOMATIC
STAY
11-23-21 [20]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 23, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<p>The Motion to Extend the Automatic Stay is granted.</p>

Elena Perez Gonzalez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 19-24237) was dismissed on

August 12, 2021, after Debtor failed to file and serve a new plan and set a motion to confirm the plan as ordered by the court. *See* Order, Bankr. E.D. Cal. No. 19-24237, Dckt. 147, August 12, 2021. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because her clients for yardcare no longer requested her services when the pandemic hit. Declaration, Dckt. 22. As a result, she fell behind on payments. *Id.* Debtor states she is refiling due to changed circumstances as her clients are more consistently requesting her services again and being more reliable. *Id.*

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by Elena Perez Gonzalez (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

2. [17-25403-E-13](#) **BYLLIE DEE** **ORDER TO SHOW CAUSE**
 [21-2070](#) **Bert Carter** **11-4-21 [38]**
 RHS-1

**DEE V. BDM MORTGAGE SERVICES,
INC. ET AL**

2 thru 3

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor-Plaintiff *pro se* and Defendant as stated on the Certificate of Service on November 5, 2021. The court computes that 32 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor-Plaintiff’s failure to establish federal court jurisdiction for their Claims for Relief for Negligence, Conversion, and Unfair Business Practices.

The Order to Show Cause is sustained, and the second, third, and fourth causes of action are dismissed without prejudice.

On September 29, 2021, Byllie Dee a.k.a. James Lawson, Jr. filed a Complaint for Declaratory Relief, Violation of the Automatic Stay; Related State and Federal Causes of Action, and Unjust Enrichment. Dckt. 1. The Complaint identifies the following causes of action:

First Claim for Relief

The Complaint alleges that on or about November 1, 2017, Defendants posted a Notice of Trustee's Sale. On August 15, 2017, Plaintiff-Debtor commenced his Chapter 13 case in this District, Case No. 17-25403. With knowledge of the bankruptcy case, Defendants proceeded with the Trustee's sale, which was conducted on November 22, 2017. Defendants then communicated with tenants on the property, causing the tenants to stop paying rent. Defendants then prosecuted eviction proceedings.

It is asserted that this conduct violated the automatic stay in Case 17-25403.

Second Claim For Relief

It is alleged that Defendants did not perform due diligence in filing collection notices, thus constituting negligent conduct as to the Plaintiff-Debtor. It is further alleged that the court may order sanctions be paid for such negligence.

Third Claim for Relief

In the Third Claim for Relief, Plaintiff-Debtor alleges that Defendants converted Plaintiff-Debtor's property in removing his property after the trustee's sale.

Fourth Claim for Relief

It is asserted that the conduct of Defendants constituted unfair competition and is a violation of the California Unfair Competition Law (Cal. B&P §§ 17200 *et seq.*)

Fifth Claim for Relief

In the Fifth Claim for Relief Plaintiff-Debtor seeks an award of attorney's fees pursuant to 11 U.S.C. § 362(k) and the contracts between Plaintiff-Debtor and Defendants.

JURISDICTION FOR BANKRUPTCY COURT PROCEEDINGS

Congress provides in 28 U.S.C. § 1334, broad in many respects (when compared to "normal" federal court jurisdiction) federal court jurisdiction, but limiting it to matters tied to the bankruptcy case.

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with

State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

- (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
- (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

Federal Court Jurisdiction exists for bankruptcy cases as provided in 28 U.S.C. § 1334 for:

1. The bankruptcy case itself;
2. Proceedings arising under Title 11 (the Bankruptcy Code);
3. Proceedings arising in the bankruptcy case; and
4. Proceeding relating to the bankruptcy case.

28 U.S.C. § 1324(a), (b). The last matter, proceedings relating to the bankruptcy case, opens a wide barndoor for federal court adjudication of claims, rights, and interests which would never otherwise grace the door of the Federal Courts. But the proceedings have to relate to the bankruptcy case and not merely be something that one of the parties prefers to have litigated in federal court based on someone having filed a bankruptcy case.

In the Complaint, Plaintiff-Debtor raises two Claims for Relief arising under the Bankruptcy Code - alleged violation of the automatic stay, 11 U.S.C. § 362(a), and requesting attorney's fees as provided for by Congress in 11 U.S.C. § 362(k).

However, the other Claims for Relief - Negligence, Conversion, and Unfair Competition are non-federal, non-bankruptcy law claims based on California law. They are not to the Plaintiff-Debtor's bankruptcy case, which has been dismissed now for forty-four (44) months (Plaintiff-Debtor's bankruptcy case, 17-25403, having been dismissed on March 26, 2018). The non-automatic stay claims are not property of the bankruptcy estate, the case having been dismissed. The non-automatic stay claims are not being administered by a representative of the bankruptcy estate, for the bankruptcy estate, or any proceeds thereof to be disbursed through the dismissed bankruptcy case.

What Plaintiff-Debtor has in his claims for negligence, conversion, and unfair business practices are garden variety state law claims that are properly adjudicated in the California Superior and Appellate Courts. The prosecution of these claims has no impact on the administration of the now dismissed bankruptcy case. The long established law on this jurisdictional question is discussed in *Querner v. Querner* (*In re Querner*), 7 F.3d 1199, 1201 (5th Cir. 1993):

Bankruptcy courts are courts of limited jurisdiction, whose scope is statutorily defined. *In re Majestic Energy Corp.*, 835 F.2d 87, 89 (5th Cir.1988). Where a federal court lacks jurisdiction, its decisions, opinions, and orders are void. *Id.* A district court has original, but not exclusive, jurisdiction of matters "arising under," "arising in," or "related to" a case under Title 11. 28 U.S.C. § 1334(b). Because section 1334(b) defines jurisdiction conjunctively, a district court has jurisdiction over the subject matter if it is at least related to the underlying bankruptcy. 835 F.2d at 90. A matter is "related to" a case under Title 11 if the outcome "could conceivably have any effect on the estate being administered in bankruptcy." *In re Wood*, 825 F.2d 90, 93 (5th Cir.1987).

This jurisdictional provision and its proper application was also discussed by the U.S. Supreme Court in *Celotex Corp. v. Edwards*, 514 U.S. 300, FN. 5, 6 (1995), which includes the following:

5. Proceedings "related to" the bankruptcy include (1) causes of action owned by the debtor which become property of the estate pursuant to 11 U.S.C. § 541, and (2) suits between third parties which have an effect on the bankruptcy estate. See 1 Collier on Bankruptcy P3.01[1]c[iv], p. 3-28 (15th ed. 1994). The first type of "related to" proceeding involves a claim like the state-law breach of contract action at issue in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 73 L. Ed. 2d 598, 102 S. Ct. 2858 (1982). The instant case involves the second type of "related to" proceeding.

6. In attempting to strike an appropriate balance, the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), devised the following test for determining the existence of "related to" jurisdiction: "The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. . . . Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.*, at 994 (emphasis in original; citations omitted). The First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits

have adopted the Pacor test with little or no variation. See *In re G. S. F. Corp.*, 938 F.2d 1467, 1475 (CA1 1991); *A. H. Robins Co. v. Piccinin*, 788 F.2d 994, 1002, n. 11 (CA4), *cert. denied*, 479 U.S. 876, 93 L. Ed. 2d 177, 107 S. Ct. 251 (1986); *In re Wood*, 825 F.2d 90, 93 (CA5 1987); *Robinson v. Michigan Consol. Gas Co.*, 918 F.2d 579, 583-584 (CA6 1990); *In re Dogpatch U.S. A., Inc.*, 810 F.2d 782, 786 (CA8 1987); *In re Fietz*, 852 F.2d 455, 457 (CA9 1988); *In re Gardner*, 913 F.2d 1515, 1518 (CA10 1990); *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788, and n. 19 (CA11 1990). The Second and Seventh Circuits, on the other hand, seem to have adopted a slightly different test. See *In re Turner*, 724 F.2d 338, 341 (CA2 1983); *In re Xonics, Inc.*, 813 F.2d 127, 131 (CA7 1987); *Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (CA7 1989). But whatever test is used, these cases make clear that bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor.

Applying these principles, there does not appear to be a basis for this court to exercise jurisdiction for the Claims for Relief for Negligence, Conversion, and Unfair Business Practices Claims for Relief in the Complaint. They cannot have any effect on the bankruptcy estate or the bankruptcy case which was dismissed in 2018.

PLAINTIFF-DEBTOR'S RESPONSE

On November 23, 2021, Plaintiff-Debtor filed responses to the court's Order to Show Cause. Dckt. 42.

Plaintiff-Debtor contends there is jurisdiction for all claims because Defendant violated Plaintiff-Debtor's rights under provisions of 28 U.S.C. §§ 157(b)(2)(G), 1334, 541(a)(1), and 362(a), and Plaintiff-Debtor's Claims 2-4, negligence, conversion, and unfair business practices, flow from these violations.

Plaintiff-Debtor, however, fails to address how there is jurisdiction when the bankruptcy case has been dismissed for forty-four (44) months. These causes of action do not have an effect on the bankruptcy estate since the case has been dismissed. Absent of having any conceivable effect on the bankruptcy estate, the law is clear: there is no relation to the bankruptcy estate.

As California Superior and Appellate Courts have the expertise to adjudicate these California law causes of action for negligence, conversion, and unfair business practices, and adjudicating these claims would have no impact on the bankruptcy estate, the court declines to extend jurisdiction.

DEFENDANT'S REPLY

On November 30, 2021, Defendant's filed a reply in support of its Motion to Dismiss and in response to the Order to Show Cause. Dckt. 44. Defendant's submit that Debtor failed to show cause why the Court should not dismiss claims two, three, and four or abstain from hearing them.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained and the causes of actions for (2) Negligence, (3) Conversion, and (4) Unfair Competition are dismissed without prejudice.

IT IS FURTHER ORDERED that the causes of actions for (1) Violation of the Stay and (5) attorney's fees pursuant to 11 U.S.C. § 362(k) may proceed in this court.

3.	<u>17-25403</u> -E-13 <u>21-2070</u>	BYLLIE DEE Bert Carter	AMENDED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL 10-28-21 [33]
	DEE V. BDM MORTGAGE SERVICES, INC. ET AL		

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor, Defendant on October 28, 2021. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Adversary Proceeding is denied without prejudice.
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BDM Mortgage Services, Inc. ("Defendant") moves for the court to dismiss all claims against it in *In re Byllie Dee's* ("Plaintiff-Debtor") Complaint according to Federal Rule of Civil Procedure 12(b)(1), (3), and (6) for lack of subject matter jurisdiction under 28 U.S.C. § 157(b)–(c), improper venue, and failure to state a claim upon which relief can be granted.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. See 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. See 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v.*

Continental Casualty Co., 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant:

- A. Defendants move for an order dismissing the Complaint of Plaintiff with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(1), (3), and (6), on the grounds that the court lacks subject-matter jurisdiction, that the venue is improper, and that Complaint fails to state a claim upon which relief can be granted.

Those “grounds” are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

- A. The Notice of Motion;

- B. Memorandum of Points and Authorities;
- C. Authorities in Support of Motion to Dismiss;
- D. Request for Judicial Notice;
- E. Any Additional Briefing; and
- F. Whatever else is presented prior to or at the hearing.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is “really” the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The court has not waived that Local Rule for Movant.

Defendant’s Reply filed November 30, 2021

On November 30, 2021, Defendant’s filed a reply in support of the Motion to Dismiss and reply to response to the Order to Show Cause. Dckt. 44. Defendant’s reply is detailed with particularity as to why the Motion should be granted. However, as stated above, the grounds must be stated in the motion. Grounds stated in the reply on the filing eve of the hearing does not overcome the Motion’s failure to state grounds with particularity.

The Motion to Dismiss Adversary Proceeding is not warranted because a failure to meet the particularity requirements as required under Federal Rules of Civil Procedure 9013. The Motion is denied.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding filed by BDM Mortgage Services, Inc. (“Defendant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on November 9, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Failure to provide proof of social security number.
- B. No declaration to support \$2,000.00 monthly income from "ex-partner."
- C. Illegible bank statement.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Schedule I shows Debtor's monthly income as \$3,034.00 and of that, \$2,000.00 is identified as "Financial support from ex-partner." Dckt. 1. Debtor has failed to provide any evidence from the ex-partner as proof they can and will contribute. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Failure to File Legible Bank Statements

Debtor has failed to timely provide Trustee with legible copies of bank statements. Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 2, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Avoid Judicial Lien is denied.</p>
--

This Motion requests an order avoiding the judicial lien of GE Money Bank ("Creditor") against property of the debtor, Juan Lopez ("Debtor") commonly known as 1830 Wentworth Avenue Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,917.47. Exhibit A, Dckt. 110. An abstract of judgment was recorded with Sacramento County on October 13, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property had a fair market value of \$330,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens stated on Debtor's Schedule D total \$193,514.00. Dckt. 1. ^{Fn.1..}

FN. 1. On Schedule A Debtor states that the Property has a Fair Market Value of \$330,000. In stating the value of the Debtor's interest, the Debtor reduces the Fair Market Value by (\$30,000) for projected 8% costs of sale, to compute a net sales proceeds amount.

In 11 U.S.C. § 522(a) Congress provides the statutory definition of value as used in that section, enacting the following:

§ 522. Exemptions

(a) In this section—

(1) “dependent” includes spouse, whether or not actually dependent; and

(2) “**value**” means **fair market value as of the date of the filing of the petition** or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

11 U.S.C. § 522(a)(2) (emphasis added).

With respect to avoiding a judicial lien, 11 U.S.C. § 522(f) provides in pertinent part (emphasis added):

(f)

(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the **debtor may avoid the fixing of a** lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a **judicial lien**, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5);

...

(2)

(A) For the purposes of this subsection, a lien shall be considered to impair an exemption **to the extent that the sum** of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value [Statutorily defined as Fair Market Value] that the debtor’s interest in the property would have in the absence of any liens. .

This Fair Market Value statutory definition was noted in Senate Report 95-989, which includes the following:

Subsection (a) of this section defines two terms: “dependent” includes the debtor’s spouse, whether or not actually dependent; and “value” means fair market

value as of the date of the filing of the petition [see the 1984 amendment to subsec. (a)(2) of this section].

Ballentine's Law Dictionary, 3rd Edition, provides the following definition of "Fair Market Value" (emphasis added):

fair market value.

Actual value or value in money. *Re Patton*, 227 Wis 407, 278 NW 866, 117 ALR 140. That which **property will sell for as between one who wants to purchase and one who wants to sell**; in the absence of a ready market and a market price, a constructive value determined upon an appropriate basis selected by the court.

This is consistent with the definition of Fair Market Value provided in Black's Law Dictionary (11th ed. 2019) which provides (emphasis added):

- fair market value. (18c) The **price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction**; the point at which supply and demand intersect. — Abbr. FMV. — Also termed actual value; actual cash value; actual market value; cash value; clear market value; fair and reasonable value; fair cash market value; fair market price; full value; market value; salable value; true value. Cf. fair value.

This is the long standing definition used in 11 U.S.C. § 522(f) proceedings for decades, as well as stating values of property on the Schedules for decades. It is unclear what basis Debtor had for stating under penalty of perjury on Schedule A/B that the value of the property was the projected net sales proceeds amount and not the actual fair market value.

The secured claims encumbering the property total \$191,952.67, as stated on the Proofs of Claim filed in this case:

Proof of Claim 12-1:

Creditor: Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but as Trustee of Securitized Mortgage Asset Loan Trust 2015-1

Amount of Secured Claim.....(\$160,864.26)

Proof of Claim 16-1:

Creditor: Bank of America, N.A.

Amount of Secured Claim.....(\$ 31,088.41)

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(2) in the amount of \$100,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is limited equity to support the judicial lien.

FMV of Property.....\$330,000.00 (Schedule A/B, Dckt. 1 at 11)

Wilmington Savings Secured Claim.....(\$160,864.26)

Bank of America, N.A.....(\$ 31,088.41)

Homestead Exemption.....(\$100,000.00)

Value in Property for Judgment Lien.....\$38,047.33

The fixing of the judicial lien does not impair Debtor's exemption of the real property, there being \$38,047.33 of value in the property in excess of the senior liens and homestead exemption. The Motion is denied.

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Juan Lopez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid the judgment lien of GE Money Bank, California Superior Court for Sacramento County Case No. 34-2011-00097445, recorded on October 13, 2011, Book 20111013 and Page 0860, with the Sacramento County Recorder, against the real property commonly known as 5960 S Land Park Dr, Apt. 253, Sacramento, California, is denied.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on November 10, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

<p>The Objection to Confirmation of Plan is sustained.</p>

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Delinquency - All sums required by the Plan have not been paid and Debtor may not make the Plan payments based on the current delinquency.
- B. Feasibility - The Debtor cannot make payments under the Plan or comply with the Plan as it will take approximately 155 months to complete.

DISCUSSION

Trustee's objections are well-taken.

Delinquency

Debtor is \$3,100.00 delinquent in plan payments, which represents one month of the \$3,100.00 plan payment. Before the hearing, another plan payment will be due. According to Trustee, the Plan in § 2.01 calls for payments to be received by Trustee not later than the twenty-fifth day of each month beginning the month after the order for relief under Chapter 13. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Feasibility

According to Trustee, the Plan will complete in 155 months instead of 60. The Trustee does not breakdown why the Plan will take 155 months. At the hearing, **XXXXXXXXXX**

The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on November 10, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. Ability to Pay - The Plan payment may not be the best efforts as there appears to be additional income to pay toward the plan from completion of their 457 Payback loan and 2020 Internal Revenue Service tax refund.
- B. Attorney Fees - The Trustee is unclear if the additional language of "attorney fees not including preparation and filing of motions for judicial lien avoidances" is proper with the Local Bankruptcy Rules for paying attorneys.

DEBTOR'S RESPONSE

On November 19, 2021, Debtor Mahagony Bonafide filed a response to Trustee's Objection. Dckt. 19. Debtor states an Amended Disclosure of Attorney Compensation was filed on November 5, 2021, to address payment of attorney fees. Debtor will be filing an amended plan shortly will should address the ability to pay issues.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Disposable Income / Not Best Effort

Trustee alleges that the Plan may violate 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The proposed Plan is \$2,479.00 for 60 months, with \$1,095.00, approximately three (3) percent, to unsecured creditors. Debtor appears to have additional income to pay toward the plan from:

1. 457 Payback Loan - Debtor is paying a 457 Payback Loan in the amount of \$168.50. Debtor admitted in the First Meeting of creditors this loan will be paid off in 2023. Therefore, Trustee believes they can increase their plan payments at that time.
2. 2020 IRS Tax Refund - Debtor received a total refund in the amount of \$3,053.00. This equates an additional \$354.41 per month.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee David Cusick ("Trustee") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 29, 2021. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is XXXXXX.

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

A. The plan is not be feasible.

DISCUSSION

Trustee's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Trustee asserts that the feasibility of the Plan depends on Debtors' being able to obtain a forbearance and selling their real property within the forbearance time period. Debtors testified at the

Meeting of Creditors that they were in the process of trying to obtain a forbearance to allow enough time to sell the real property. Trustee states Debtors are currently delinquent on their mortgage. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable. The court notes that the Order approving Debtor's Motion to Employ Lisa McKee as Realtor to sell Debtor's real property was issued on October 4, 2021. Dckt. 26.

The Trustee agreed to a continuance in light of Debtor diligently working on the loan modification and the sale of the property.

December 7, 2021 Hearing

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is **xxxxxx**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 9, 2021. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

The Objection to Confirmation of Plan is XXXXXX.

BCMB1 Trust ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

A. The plan is not feasible.

DISCUSSION

Creditor's objections are well-taken.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtors may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor contends the plan is not feasible because it fails to properly provide for Creditor's secured claim. Debtors' Schedule I and J identify a net monthly income of \$1,988.43, but also identifies

\$0.00 going to mortgage payments. As such, Debtors' new monthly income is likely overstated. Furthermore, Debtors identify Creditor's claim to be \$82,500.00, however, the correct claim amount is \$84,187.04. Debtors' proposed plan includes monthly plan payments of \$1,990.00. Debtors do not have sufficient income to fund the plan as their monthly net income is less than the monthly plan payment amount. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtors filed an Response to Creditor's Objection on October 11, 2021. Dckt. 27. Debtors contend that the Plan understates Creditor's secured claim by \$1,687.04. However, Debtors state that their current Chapter 13 Plan is sufficient to pay Creditor with approximately \$28.00 a month to go towards the understated amount.

Furthermore, Debtors state they are working to employ a realtor to sell their real property and if the property is sold, Creditor will be paid in full. The court notes that the Order approving Debtors' Motion to Employ Lisa McKee as Realtor to sell Debtors' real property was issued on October 4, 2021. Dckt. 26. While the Debtors state the Plan should be confirmed, the court does not have an accurate picture of Debtors' financial reality and thus, cannot determine whether the Plan is confirmable.

The Parties agreed to a continuance as Debtor works to address these issues.

December 7, 2021 Hearing

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by BCMB1 Trust ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of Plan is **XXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 18, 2021. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
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The debtor, Bret Michael Benziger ("Debtor") seeks confirmation of the Modified Plan because Debtor's income has increased not much more than the periodic UC Davis cost of living increases. Debtor's Declaration, Dckt. 37. His financial situation is more stable now than it was earlier this year, where he had one unusual event of expenses due to a personal matter. *Id.* Debtor states he will be able to make payments under the plan and comply with the plan. *Id.* Additionally, Debtor states he will be filing a new budget with new I and J Schedules. No such Schedules have been filed. However, Debtor's original Schedule J shows a monthly net income of \$700.00, which is Debtor's proposed monthly payment for his Modified Plan (see below). Dckt. 1 at 39.

The Modified Plan provides \$18,250.00 to be paid in the aggregate sum for the first thirty (30) months, then \$700.00 to be paid each month for the next thirty (30) months, and a thirty-five (35) percent dividend to unsecured claims totaling \$32,102.00. Modified Plan, Dckt. 36. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee") filed a response on November 3, 2021.

Dckt. 41. Trustee requests the following be considered:

- A. SUPPLEMENTAL SCHEDULE I & J - No current Schedule I & J to support this motion so they may not be able to afford the payments.
- B. POSSIBLE OVERPAYMENT - Trustee is not sure if \$300.00 that arrived after the Plan was filed on October 18, 2021, was prepayment for part of the \$700.00 November payment or if it is intended to be applied to the October payment, which would make the total amount paid through October as \$18,550.00.

At the hearing, **XXXXXXX**

~~_____ The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~_____ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~_____ The Motion to Confirm the Modified Chapter 13 Plan filed by Bret Michael Benziger ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~_____ **IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 18, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is XXXXX.</p>
--

The Debtor, Roque Delarosa ("Debtor") seeks confirmation of the Modified Plan because of a financial hardship due to COVID-19 and does not qualify for unemployment. Declaration, Dckt. 86. The Modified Plan provides payments of \$1,625.00 for 84 months, and a 100 percent dividend to unsecured claims totaling \$10,310.47. Modified Plan, Dckt. 85. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on September 28, 2021. Dckt. 91. Trustee opposes confirmation of the Plan on the basis that:

- A. No reason to modify the current plan.
- B. Declarations are inconsistent with Supplemental Schedule I & J.
- C. Debtor seeks to extend the plan length when the Plan as proposed will be completed sooner.

Debtor's Response (Dckt. 94)

Debtor filed a Response on October 5, 2021. First, Debtor argues that even with the \$320.00 reduction to create a COVID savings fund, the Plan will still provide a 100% dividend to creditors. Response, p. 1:22-24; Dckt. 94.

Debtor also asserts that modification cures a post-petition mortgage arrearage and completes the Plan in 48 months. *Id.*; p. 2:1-2.

DISCUSSION

Failure to Provide Disposable Income / Not Best Effort

Trustee alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Debtor's declarations support an actual need to modify the plan, but, they are not consistent with the Supplemental Schedule I & J filed by the Debtor. The Debtor is also attempting to extend their Plan in order to reduce their plan payments even though this is unnecessary because the Plan as is will complete in 48 months with 100% to unsecured creditors.

However, in looking at Amended Schedule I, all of Debtor's income is "secure" from loss due to COVID. Debtor's income consists of Social Security, State Grant, pension, and Department of Defense Pension. Dckt. 89. Debtor states having monthly income of \$3,370. *Id.* On Amended Schedule J, Debtor states having \$1,700 in monthly net income after payment of reasonable and necessary expenses. However, this includes a \$320.00 saving for "emergency."

Debtor's declaration raises some serious questions, including who prepared it and whether Debtor actually ever read it. Dckt. 86. It begin with stating that due to COVID-19 Debtor has suffered a financial hardship. Declaration, ¶ 1; Dckt. 86. The cause of financial hardship is stated to be:

2. cost of Lyft increases because they do not drive

Id., p. 1:23. Though Debtor states he "no drive," he doesn't explain how this results in a financial hardship whereby Debtor wants to set aside in a fund (possibly blocked) \$320 a month for some future financial emergency.

In his Declaration, Debtor provides his legal opinion that Debtor believes that the Plan "complies with the applicable provisions of the bankruptcy code. . . ." *Id.*, p.. 2:14-15. There is nothing to indicate how, under penalty of perjury Debtor could provide such testimony.

Debtor appears to admit the above testimony under penalty of perjury is false, stating later in the Declaration, “Although I am not attorneys and lack legal competence;” *Id.*, p. 2:25-26.

It is unclear how and of what relevance is Debtor’s testimony of, “cost of lyft increases because we do no drive.” On Schedule I, there is no income from driving for Lyft. Dckt. 1. On the latest Amended Schedule J (Debtor having the need to amend Schedule J many times with the assistance of counsel) shows no Lyft expense or increase in transportation expenses. Dckt. 89.

Debtor has stable income. Debtor has stable expenses. It appears that Debtor may well have never read the Declaration that he purports to have signed. If signed and truthful, Debtor has admitted that he lacks legal competence, resulting in the “testimony” he purports to give being not only unreliable, but apparently false testimony drafted by counsel.

It appears that Debtor is “legally incapable” of prosecuting a bankruptcy case, is “legally incompetent,” and has had false testimony prepared and filed in this case. Debtor is not prosecuting this case in good faith.

Plan Term is Greater than 60 months

Debtor is not in material default under the Plan but wants to extend their Plan from 60 to 84 months. According to Trustee, the Plan will complete in 48 months if the Debtor follows the Plan as is. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

The Trustee agreed to a continuance to allow Debtor to address these issues.

Supplemental Reply of Debtor

On November 23, 2021, Debtor filed a supplemental reply to the opposition. Dckt. 98. Debtor provides updates for the following:

1. The modification cures post-petition mortgage increase areas and completes in approximately thirteen (13) additional months based on \$1,400.50 required for continuing mortgage payments, and the balance of \$3,267.25 remaining to be paid, at one-hundred (100) percent.
2. Debtor’s Plan pays one-hundred (100) percent, cures post-petition arrears, and is projected to complete early.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Roque Delarosa (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that the Motion to Confirm the Modified Plan is

XXXXXX .

12.	<u>19-24051</u> -E-13 <u>KMM</u> -2	ERIC/ROSALIA FUEGA Jeffrey Ogilvie	MOTION TO APPROVE LOAN MODIFICATION 10-28-21 [81]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 28, 2021. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is XXXXX.

The Motion to Approve Loan Modification filed by The Money Source Inc. (“Creditor”) seeks court approval for Eric Ali’i Fueva and Rosalia Theresa Inez Fueva (“Debtor”) to modify their loan agreement affecting the real property commonly known as 2938 Nicolet Lane, Redding, California. Creditor, whose claim the Plan provides for in Class 4, claims the purpose of the Motion is to obtain a “comfort order” so the court may find that negotiating and entering into the Loan Modification Agreement does not violate the automatic stay provision of 11 U.S.C. § 362 or any other provision of the Bankruptcy Code or Law. ^{FN.1.}

FN. 1. Seeing the use of the phrase “comfort order” causes the court to pause and smile, thinking back to the response of the Hon. Thomas Holman in this District when that term was used in his court. He quickly concluded that since it was merely for comfort, then there was no legal basis for granting such relief – MOTION DENIED!

The judge in this case, consistent with Ninth Circuit authority, treats such requests as “discretion is the better part of valor” motion. Obtaining an order holding that no relief is necessary because the conduct does not violate the stay is proper. It is not a “mere” comfort order granting relief that is not necessary, but a substantive order documenting that such relief was not necessary for the parties (and precluding litigation in the future if some future counsel for a debtor were to create an “interesting” argument that the modification was an enforcement of an obligation in violation of the stay – and demanding big \$\$\$\$\$\$ for the alleged violation.

Creditor and Debtor has worked out a loan modification agreement under the following terms:

- a. Lender: The Money Source Inc.
- b. New Principal Balance: \$325,752.38
- c. Commitment Term: Nov 1, 2021, through Oct 1, 2048
- d. Initial Monthly Payment (principal and interest): \$1,832.18
- e. Initial Interest Rate 4.990%.

Exhibit A, Dckt. 84. These terms reflect the same terms as the Note, apart from the reduced Principal Balance. Exhibit B, Dckt. 84. The Motion is supported by the Declaration of Thomas Clark. Dckt. 83. The Declaration affirms Creditor’s desire to modify Debtor’s loan to bring Debtor current.

The automatic stay provisions of 11 U.S.C. § 362 provides for a “broad stay of litigation, lien enforcement and other actions, judicial or otherwise that are attempts to enforce or collect prepetition claims.” Collier on Bankruptcy, ¶ 362.01 (16th Edition, 2020). Therefore, the automatic stay is to prevent enforcement actions against Debtor from Creditor. 11 U.S.C. § 362 does not prevent Creditors and Debtors from modifying loans. Given all the terms of the loan modification are identical to the Note except for the reduced Principal amount, the loan will still be adequately funded through the Plan and will not have any adverse impact on the estate. Additionally, the loan modification will not cause any enforcement action to be undertaken against Debtor from Creditor. Therefore, the modification is allowed.

The court notes that reaffirmation agreements under 11 U.S.C. § 524 provide for strict limitations on the ability to reaffirm a debt. This court does not approve real property reaffirmation agreements.

However, upon review of the terms of the Modification, the court concludes that this is a post-petition, bona fide modification of the underlying debt, and not merely an improper attempt to enforce a pre-petition obligation.

The Motion also seeks the court authorizing Debtor to enter into the loan modification. Proper grounds have been provided for such, and the Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Loan Modification filed by The Money Source Inc. (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes for Eric Ali'i Fueva and Rosalia Theresa Inez Fueva (“Debtor”) to amend the terms of the loan with The Money Source Inc. (“Creditor”), which is secured by the real property commonly known as 2938 Nicolet Lane, Redding, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 84).

IT IS FURTHER ORDERED that the negotiation of the loan modification with Debtor is not in violation of the automatic stay.

13.	<u>12-31452</u> -E-13 <u>PGM-2</u> 13 thru 14	RAYMOND/GEMMA TAYLOR Peter Macaluso	MOTION TO AVOID LIEN OF DISCOVER BANK 11-9-21 <u>[74]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 9, 2021. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank (“Creditor”)

against property of the debtor, Raymond Taylor and Gemma Glory Taylor (“Debtor”) commonly known as 7861 Manorside Dr Sacramento, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,667.74. Exhibit A, Dckt. 77. An abstract of judgment was recorded with Sacramento County on November 1, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$206,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$543,588.87 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$9,109.79 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Raymond Taylor and Gemma Glory Taylor (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Discover Bank, California Superior Court for Sacramento County Case No. 34-2009-00056839, recorded on November 1, 2010, Book 20101101 and Page 1375, with the Sacramento County Recorder, against the real property commonly known as 7861 Manorside Dr Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Professional Collection Consultants ("Creditor") against property of the debtor, Raymond Taylor and Gemma Glory Taylor ("Debtor") commonly known as 7861 Manorside Dr, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$11,082.50. Exhibit A, Dckt. 83. An abstract of judgment was recorded with Sacramento County on October 19, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$206,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$543,588.87 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$9,109.79 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Raymond Taylor and Gemma Glory Taylor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Professional Collection Consultants, California Superior Court for Sacramento County Case No. 342011-00110942, recorded on October 19, 2012, Book 20121019 and Page 0598, with the Sacramento County Recorder, against the real property commonly known as 7861 Manorside Dr, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on November 9, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
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<p>The Objection to Confirmation of Plan is sustained and the Plan is not confirmed.</p>

The Chapter 13 Trustee, David Cusick ("Trustee") opposes confirmation of the Plan on the basis that:

- A. PLAN NOT FEASIBLE - The Plan will take an estimated 102 months to complete. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

1) Bosco Credit, LLC filed a Proof of Claim for real property located at 5505 Jilson Way, Elk Grove, CA 95757, with prepetition arrears of \$184,721.16. Debtor lists Bosco Credit in Class 1 with \$153,879.21 in prepetition arrears.

2) PHH Mortgage Corporation filed a Proof of Claim for real property also located at 5505 Jilson Way, Elk Grove, CA

95757, with prepetition arrears of \$6,167.65. Debtor lists \$0.00 in pre-petition arrears.

3) The Internal Revenue Service Proof of Claim which indicates priority debt in the amount of \$6,535.94 while Debtor scheduled the amount of \$5,762.32.

- B. CLASS 4 MORTGAGE ARREARS - The Plan does not provide for the cure of the default on the mortgage. PHH Mortgage Corporation shows arrears in the amount of \$6,167.65, and they may not be properly classified in the Plan.
- C. SECTION 7. NONSTANDARD PROVISIONS - The box under §1.02. was not checked, and there are integral provisions on Page 7.

DISCUSSION

Trustee's objections are well-taken.

Plan Term is Greater than 60 months

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 102 months due to not listing prepetition arrears. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Cure Arrearage of Creditor

PHH has filed a timely proof of claim in which it asserts \$6,167.65 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

Section 7 Nonstandard Provisions

Section 1.02 of the Chapter 13 Form requires a box to be checked if Debtor requests any nonstandard provision in Section 7. A failure to check the box is a violation of Local Bankruptcy Rules 3015-1.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee,

David Cusick (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

16. [21-23261-E-13](#) **FLORA BROUGHTON** **OBJECTION TO CONFIRMATION OF**
[ELP-1](#) **Peter Macaluso** **PLAN BY BOSCO CREDIT LLC**
10-21-21 [30]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 21, 2021. By the court’s calculation, 47 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

<p>The Objection to Confirmation of Plan is sustained.</p>

Bosco Credit LLC (“Creditor”) holding a secured claim opposes confirmation of the Plan on the basis that:

- A. IMPERMISSIBLY MODIFIES SECURED CREDITOR’S RIGHTS - Secured Creditor holds a lien on the Debtor’s principal residence that is secured. As a result, Debtor cannot modify Secured Creditor’s lien pursuant to §1322(b)(2).

- B. FAILS TO CURE PRE-PETITION ARREARAGES - Plan does not set forth a reasonable schedule and time period for the payment of the arrearages owed to Secured Creditor. The payoff period proposed is unreasonable in light of the non-payment history.
- C. FAILS TO PROVIDE FOR CORRECT POST-PETITION PAYMENT - It appears Debtor's income as scheduled may support repayment. The difference of amounts owed versus proposed are substantial enough to warrant an amended plan that conforms to Secured Creditor's claims

DISCUSSION

Some of Creditor's objections are well-taken.

Modification of an Obligation Secured Only by Principal Residence

Creditor asserts that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed a Proof of Claim indicating a secured claim in the amount of \$255,340.79, secured by a secondary deed of trust against the property commonly known as 5505 Jilson Way, Elk Grove, California. Debtor's Schedules indicate that this is Debtor's primary residence. Creditor asserts that this modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

However, the Chapter 13 Plan expressly provides that the secured claim and the arrearage is as stated in the Proof of Claim filed by Creditor or as ordered by the court on a motion to value. Paragraph 3.02 of the Plan, Dckt. 18 (emphasis added), expressly states:

3.02. **The proof of claim**, not this plan or the schedules, **shall determine the amount and classification of a claim** unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim

Creditor's Objection asserting that the Plan impermissibly modifies the secured claim is without merit and is overruled.

Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed a timely proof of claim in which it asserts \$184,721.16 in pre-petition arrearages. The Plan does not propose to cure those arrearages. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearages.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Bosco Credit LLC (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

17.	<u>21-23468</u> -E-13 <u>DPC-1</u> 17 thru 18	BRANDON MOORE Stephan Brown	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-10-21 <u>[17]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor’s Attorney on November 10, 2021. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----
-----.

The Objection to Confirmation of Plan is sustained.
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The Chapter 13 Trustee, David Cusick (“Trustee”) opposes confirmation of the Plan on the

basis that:

- A. FAILED TO PROVIDE PROOF OF SOCIAL SECURITY NUMBER (SSN) - Debtor failed to provide his SSN at the First Meeting of Creditors. Therefore, it was continued to November 18, 2021.
- B. OVEREXTENSION - The Internal Revenue Service (Claim 4) is a priority claim for over \$20,000.00 when the plan projects it at \$0.00. The plan will take 80 months which exceeds the maximum length of 60.
- C. FAILS LIQUIDATION - The unsecured creditors would receive a higher distribution in a Chapter 7 Proceeding because the total value of non-exempt property exceeds \$20,000.00.
- D. PAYMENTS MAY NOT BE FEASIBLE - The Debtor admitted that their company might be worth more than the listed \$5,000.00. Trustee needs further clarification of company's value. Creditor, Toyota Motor Credit Corporation, has a secured claim in the amount of \$49,234.27 that is not provided for.

DISCUSSION

Trustee's objections are well-taken.

Failure to Provide Social Security Number

Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

Overextended Plan/Failure to Account for Priority Claim

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee, the Plan will complete in 80 months due to a failure to provide for the Internal Revenue Services' Priority Claim of \$20,000.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor Fails Liquidation Analysis

Debtor's plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Trustee states that the unsecured creditors would receive a higher distribution in a Chapter 7 Proceeding. According to Schedules A, B and C, the total value of non-exempt property exceeds \$20,000 based on cash and business value.

Infeasible Plan

Trustee alleges that the Plan may not be feasible. 11 U.S.C. § 1325(a)(6). The Debtor's

business may be worth more than \$5,000.00 and as such, Trustee needs further information as to the business's worth. Thus, the Plan may not be confirmed.

Failure to Provide for a Secured Claim

Creditor, Toyota Motor Credit Corporation, has a secured claim in the amount of \$49,234.27. The Plan does not provide for the secured claim. As such, the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 28, 2021. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

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<p>The Objection to Confirmation of Plan is sustained.</p>

Toyota Motor Credit Corporation ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. Debtor has not provided for Secured Creditor's claim in any amount.

DISCUSSION

Creditor's objections are well-taken.

Failure to Provide for a Secured Claim

Creditor asserts a claim of \$49,234.27 in this case. Debtor's Schedule D and the Plan does not estimate or provide for any amount of Creditor's claim.

Creditor alleges that the Plan is not feasible and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of Creditor's matured obligation, which is secured by Debtor's residence. *See* 11 U.S.C. § 1325(a)(6).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that a debtor adequately fund a plan with future earnings or other future income that is paid over to Trustee (11 U.S.C. § 1322(a)(1)), provide for payment in full of priority claims (11 U.S.C. § 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (11 U.S.C. § 1322(a)(3)). Nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim, however.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (11 U.S.C. § 1322(b)(2)), cure any default on a secured claim—including a home loan—(11 U.S.C. § 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (11 U.S.C. § 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

- A. Provide a treatment that the debtor and creditor agree to (11 U.S.C. § 1325(a)(5)(A)),
- B. Provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or
- C. Surrender the collateral for the claim to the creditor (11 U.S.C. § 1325(a)(5)(C)).

Those three possibilities are relevant only if the plan provides for the secured claim, though.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claimholder may seek termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's rehabilitation and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for respondent Creditor's secured claim raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). That is reason to sustain the Objection.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

hearing.

The Objection to the Chapter 13 Plan filed by Toyota Motor Credit Corporation (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

19. [21-20894-E-13](#) **ELISEI BRANDUSA** **MOTION TO CONFIRM PLAN**
[FF-2](#) **Gary Fraley** **11-2-21 [55]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 2, 2021. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Amended Plan is denied.
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The debtor, Elisei Brandusa (“Debtor”), seeks confirmation of the Amended Plan. Debtor claims the Amended Plan provides additional information that was required when the Original Plan was rejected. Motion, Dckt. 44. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

CHAPTER 13 TRUSTEE’S OPPOSITION

The Chapter 13 Trustee, David Cusick (“Trustee”) filed an Opposition on November 22, 2021. Dckt. 65. Trustee opposes confirmation of the Plan on the basis that:

- A. The Plan runs over 60 months on the priority claim of Ana Triscas.
- B. The Plan does not account for a Domestic Support Obligation.
- C. The Debtor may not be receiving sufficient pay to afford the plan. Trustee has not received copies of three months of post-filing income pay advices as stated in the Declaration of Debtor (Dckt. 59).
- D. Debtor does not state when the 401(k) loan will be paid off to show when they can increase the Plan payments.

DISCUSSION

Priority Claim Exceeding 60 Months

The Plan will complete in more than 60 months due to the Plan proposing to pay priority claims in full, but only estimates priority claims at \$700.00. Rather, priority claims total \$11,618.03. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Failure to Provide for a Priority Claim

Trustee asserts that there may be a Domestic Support Obligation not provided for. According to Proof of Claim 5-1, Ana Triscas has a priority claim as domestic support obligation in the amount of \$11,487.00. Proof of Claim 5-1, filed on May 19, 2021. The Plan does not provide for all priority debt as required by 11 U.S.C. § 1322(a)(2).

Failure to Provide Pay Stubs / Pay Advices

Debtor has not provided Trustee with employer payment advices for three months post-petition, as Debtor stated they would provide in their Declaration to confirm the Amended Plan. Dckt. 59. Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor proposes increasing Plan payments when their 401(k) loan is repaid. However, Debtor has not identified when it will occur. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable.

The Amended Plan does not comply] with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Elisei Brandusa (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

20. [20-20599-E-13](#) **SHANNAN TAYLOR** **MOTION TO INCUR DEBT**
[MS-1](#) **Mark Shmorgon** **10-26-21 [39]**

20 thru 22

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 26, 2021. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Incur Debt is granted.

Shannan Natalie Taylor (“Debtor”) seeks permission for her non-filing spouse, Nathan M. Taylor, to incur post-petition debt in order to take out a second mortgage their primary residence and pay off his unsecured debt. The terms of the second mortgage are as follows:

a. New Principal Balance: \$65,000.00

- b. Interest Rate: 4.00%
- c. Term: 180 months
- d. Estimate New Monthly Payment: \$480.80
- e. Estimated Closing Costs: \$1,797.00
- f. Pay off Non-Filing Spouse's Debt: \$57,540.00
- g. Estimated Cash to Borrowers: \$5,663.00

Additionally, Debtor filed Amended Schedules I and J to show Debtor can increase their plan payments from \$4,300.00 to \$5,284.00 to pay off creditors in a shorter time. Amended Schedule J, Dckt. 37.

TRUSTEE'S NONOPPOSITION

On November 23, 2021, the Chapter 13 Trustee, David Cusick, filed a nonopposition to Debtor's Motion to Incur. Dckt. 59. Trustee notes Debtor is current on plan payments and her modified plan will pay 100% of unsecured creditors. The loan of the non-filing spouse will consolidate their debts into a lower payment to ensure she can complete her plan.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Shannan Natalie Taylor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Shannan Natalie Taylor is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 42.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 26, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Confirm the Modified Plan is granted and the Plan is confirmed.</p>

The debtor, Shannan Natalie Taylor ("Debtor") seeks confirmation of the Modified Plan to increase plan payments from \$4,300.00 to \$5,284.00 once her non-filing spouse takes out their second mortgage. Declaration, Dckt. 47. The Modified Plan provides \$81,700.00 to be paid as of month 19, \$4,300.00 per month for months 20-22, and \$5,284.00 per month for months 23 to 60. Additionally, Class 2 Dividend to Chase shall be \$0.00 per month because the claim is already paid in full. Class 4 Dividend to Sierra Central Credit Union shall be \$480.80 per month once the motion to incur new debt is approved. Modified Plan, Dckt. 46. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee") filed an Opposition on November 23, 2021. Dckt. 56. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan relies on the Motion to Incur Debt.
- B. Debtor budgets a car payment on Supplement Schedule J in the amount of \$575.93, when hearing notes from March 19, 2020 indicate the last payment

was to have been received on October of 2021.

DEBTOR'S RESPONSE

Debtor filed a response to Trustee's opposition on November 24, 2021. Dckt. 63. Debtor states the car is actually scheduled to be paid off on September 23, 2025, which is six months after plan completion. Debtor evidences this through the Auto Contract for the Vehicle where it is noted that the last payment date is indeed September 23, 2025. Exhibit A, Dckt. 64.

At the hearing, ~~XXXXXXXXXX~~

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Shannan Natalie Taylor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on October 26, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 26, 2021. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion for Allowance of Professional Fees is granted.</p>

Mark Shmorgon, the Attorney (“Applicant”) for Shannan Natalie Taylor, the Chapter 13 Debtor (“Client”), makes an Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 20, 2021 through October 26, 2021. The order of the court approving employment of Applicant was entered on October 27, 2021. Dckt. 55. Applicant requests fees in the amount of \$4,000.00.

TRUSTEE’S NONOPPOSITION

David Cusick, the Chapter 13 Trustee, filed a nonopposition on November 23, 2021. Dckt. 61. Trustee notes the application does not include an accounting of the total fees.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services

disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include Case Administration, Substitution of Attorney, Amendments, Modifying the Plan, and Applications for Compensation. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 1.5 hours in this category. Applicant discussed with Debtors the case

Substitution of Attorney: Applicant spent 1.0 hours in this category. Applicant prepared and filed the substitution of attorney.

Motion to Incur New Debt: Applicant spent 2.0 hours in this category. Applicant drafted the motion.

Amendments: Applicant spent 1.0 hours in this category. Applicant reviewed the notice of filed claims and amended schedules as necessary.

Modification of Plan: Applicant spent 3.5 hours in this category. Applicant drafted a motion to modify the plan and drafted the modified plan.

Application for Compensation: Applicant spent 1.0 hours in this category. Applicant drafted this motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Attorney Mark Shmorgon	10.0	\$400.00	\$4,000.00
Total Fees for Period of Application			\$4,000.00

FEES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Prior interim fees of \$4,000.00 are authorized to be paid pursuant to § 330 from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee under the confirmed plan to pay 100% of the fees allowed by the court.

Applicant is allowed, and the Chapter 13 Trustee under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$4,000.00
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pursuant to this Application as prior interim fees of \$4,000.00 pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Mark Shmorgon, the Attorney (“Applicant”) for Shannan Natalie Taylor, the Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mark Shmorgon is allowed the following fees and expenses as a professional of the Estate:

Mark Shmorgon, Professional employed by Chapter 13 Debtor.

Fees in the amount of \$4,000.00.

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and

subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay 100% of the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

FINAL RULINGS

23. [21-23315-E-13](#) **ANTIONETTE WOODS** **MOTION TO INCUR DEBT**
[MJD-2](#) **Matthew DeCaminada** **10-28-21 [35]**

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 28, 2021. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Approve Loan Modification is granted.

Antionette Michelle Woods (“Debtor”) seeks permission to approve a loan modification for Debtor to incur post-petition credit for the purpose of modifying the terms of an existing deed of trust against the real property commonly known as 2132 Heger Way, Elk Grove, California 95758. The new debt is a single loan incurred to modify existing debt encumbered on Debtor’s residence. The security for the new debt is on Debtor’s existing residence.

Bank of America (“Creditor”), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will reduce Debtor’s mortgage payment from the current \$2,986.46 per month to \$2,853.66 per month. Proof of Claim 5-1; Exhibit A, Dckt. 38. The modification will modify the principal balance to \$532,862.90, which capitalizes the pre-petition arrears and provide for stepped decreases the interest rate from 4.25% to 3.00% until principal and interest are paid in full. *Id.*

The Motion is supported by the Declaration of Antionette Michelle Woods. Dckt. 37. The

Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S NONOPPOSITION

The Chapter 13 Trustee, David Cusick, filed a nonopposition for Debtor's Motion. Dckt. 41. Trustee notes there is a typo in Debtor's Motion where it states modified interest rate as 4.25% (Line 4) but the Loan Modification Agreement shows the interest rate as 3.0000%.

This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Loan Modification filed by Antionette Michelle Woods ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Antionette Michelle Woods to amend the terms of the loan with Bank of America ("Creditor"), which is secured by the real property commonly known as 2132 Heger Way, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 38).

24. [21-20917-E-13](#) **LORAIN DIXON**
[BPR-2](#) **Peter Macaluso**

**CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
CALIFORNIA DEPARTMENT OF
JUSTICE
5-24-21 [\[35\]](#)**

Final Ruling: No appearance at the December 7, 2021 hearing is required.

The Objection to Confirmation of the Chapter 13 Plan is dismissed without prejudice as moot, the Parties having stipulated to the entry of an Order confirming the Amended Chapter 13 Plan. Order, Dckt. 89.

NOVEMBER 2, 2021 SCHEDULING CONFERENCE

At the Scheduling Conference, counsel for the State of California confirmed that the resolution as reported, and that the objection as to the 22,000 shares is withdrawn. The Parties requested a continuance so that their resolution of this matter may be documented and fully resolved without an evidentiary hearing.

NOVEMBER 10, 2021 ORDER CONFIRMING PLAN

On November 10, 2021, the Court granted an order confirming the Plan. Dckt. 89. It was further ordered that California Department of Justice (“DOJ”) holds a judgment lien created by the judgment against Debtor entered by the Superior Court of California, County of San Francisco on February 3, 2021 (the “Judgment”), and which lien attaches to Debtor’s primary residence and is secured by a recorded Abstract of Judgment. Additionally, parties agree the DOJ’s claim is nondischargeable until payment as determined under non-bankruptcy law. The DOJ is to receive \$1,190.00 per month.

DECEMBER 7, 2021 HEARING

The Parties having resolve the issues and having stipulated to amendments to the Plan and the entry of an Order confirming the Plan as amended, this Objection is dismissed without prejudice.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation filed by the State of California having been presented to the court, the Parties having stipulated to amended Plan terms, and the Order confirming the Plan as amended having been entered, and good cause appearing,

IT IS ORDERED that the Objection is dismissed without prejudice as moot.

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 22, 2021. By the court's calculation, 46 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, George Richard Stubblefield and Lindsay Tyler Stubblefield ("Debtor"), have provided evidence in support of confirmation. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition indicating non-opposition on November 23, 2021. Dckt. 29. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the debtor, Name of Debtor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on October 8, 2021, is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. [21-23440](#)-E-13 **GENO CHIARPOTTI** **OBJECTION TO CONFIRMATION OF**
[DPC-1](#) **Seth Hanson** **PLAN BY DAVID P. CUSICK**
 11-10-21 [15]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the December 7, 2021 hearing is required.

The Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.

David P. Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney on November 22, 2021. By the court’s calculation, 15 days’ notice was provided. 28 days’ notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Collateral and Secured Claim of SAFE Credit Union (“Creditor”) is \$18,000.00, and Creditor’s secured claim is determined to have a value of \$18,000.00.

The Motion filed by Dora Lynn Roberts (“Debtor”) to value the secured claim of SAFE Credit Union (“Creditor”) is accompanied by Debtor’s declaration. Declaration, Dckt. 12. Debtor is the owner of a 2015 Kia Sorento (“Vehicle”). Debtor seeks to value the Vehicle at a replacement value of \$18,000 as of the petition filing date. As the owner, Debtor’s opinion of value is evidence of the asset’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE’S NONOPPOSITION

The Chapter 13 Trustee, David Cusick, filed a nonopposition on November 22, 2021. Dckt. 19. The Trustee requests the court considers that the Creditor is included in the proposed plan as a Class 2(B) with a value of \$18,000.00. Creditor has not filed a claim to date.

DISCUSSION

The lien on the Vehicle’s title secures a purchase-money loan incurred on October, 2018, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$22,791.00. Declaration, Dckt. 12. Therefore, Creditor’s claim secured by a lien on the asset’s title is under-collateralized. Creditor’s secured claim is determined to be in the

amount of \$18,000.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral and Secured Claim filed by Dora Lynn Roberts (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of SAFE Credit Union (“Creditor”) secured by an asset described as 2015 Kia Sorento (“Vehicle”) is determined to be a secured claim in the amount of \$18,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$18,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

28. [17-26064](#)-E-13 **MARTIN/MARIA ORTEGA** **MOTION TO SELL**
[PGM-6](#) **Peter Macaluso** **10-27-21 [116]**

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 27, 2021. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is dismissed.
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The Bankruptcy Code permits Martin Alberto Ortega and Maria Del Carmen Ortega, Chapter 13 Debtor, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 515 E. Tabor Avenue, Fairfield, California (“Property”).

The proposed purchaser of the Property is Ephrem Tiku. Debtor states the proposed offer is in the amount of \$565,000.00 (Dckt. 118). This is evidenced in Seller’s Estimated Closing Statement. Exhibit A, Dckt. 119. However, the Purchase Agreement states the purchase price to be \$561,000.00. Exhibit B, Dckt. 119. The court is unclear what the proper purchase price is.

DISCUSSION

Debtor filed a Notice to Withdraw the Motion, stating that the offer fell through and there is not a sale to be conducted.

Debtor does not cite any Rule of Civil Procedure or Bankruptcy Procedure to “withdraw” a motion. However, Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, 9014(c) provide that if no responsive pleading is filed, the movant may dismiss the motion.

For this Motion, the Chapter 13 Trustee has filed a response, which blocks Debtor’s ability to dismiss the Motion.

The court construes the Notice to be an *ex parte* motion to dismiss the present Motion as provided in Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 7041, 9014(c). The *Ex Parte* Motion is granted and the Motion for Authorization to Sell is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Martin Alberto Ortega and Maria Del Carmen Ortega, Chapter 13 Debtor, (“Movant”) having been presented to the court, Debtor having filed an Ex Parte Motion to Dismiss the Motion to Sell, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Motion to Sell is dismissed.

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 25, 2021. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Confirm the Amended Plan is granted.</p>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The debtor, Reshma Devi Sharma ("Debtor") has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee, David Cusick ("Trustee"), or by creditors. The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Non-Opposition on November 16, 2021. Dckt. 56. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed Reshma Devi Sharma ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on October 25, 2021, is confirmed. Debtor's Counsel shall

prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. [19-25877](#)-E-13 SHANITA JEFFERSON MOTION TO MODIFY PLAN
[TLA-4](#) Thomas Amberg 10-27-21 [113]

Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 27, 2021. By the court’s calculation, 41 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Confirm the Modified Plan is granted.</p>

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Reshma Devi Sharma (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Non-Opposition on November 16, 2021. Dckt. 56. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Reshma Devi Sharma (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on October 25, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

31.	<u>17-23384-E-13</u> <u>DPC-2</u>	JAMES MORGAN Kristy Hernandez	CONTINUED MOTION TO DISMISS CASE 10-13-21 [39]
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Final Ruling: No appearance at the December 7, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 13, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is dismissed without prejudice.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on November 30, 2021, Dckt. 49; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 34, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Chapter 13 Trustee’s Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.